



SMART, SAFE, AND FAIR:

STRATEGIES TO PREVENT
YOUTH VIOLENCE, HEAL VICTIMS
OF CRIME, AND REDUCE RACIAL INEQUALITY

ACKNOWLEDGMENTS

ABOUT THE ORGANIZATIONS

JUSTICE POLICY INSTITUTE

Dedicated to reducing the use of incarceration and the justice system by promoting research-based, fair, and effective policies. JPI envisions a society with safe, equitable and healthy communities; just and effective solutions to social problems; and the use of incarceration only as a last resort.

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National Center for Victims of Crime is the nation's leading resource and advocacy organization for victims of all types of crime and for the people who serve them. We enable people -- elected officials, policy makers, business leaders, law enforcement officers, judges, media representatives, educators, healthcare providers -- to understand that justice for victims involves more than holding offenders accountable for their crimes. It involves providing victims full participation in the criminal justice process and the means to overcome the physical, emotional, and financial consequences of crime.

FUNDERS

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THANK YOU FOR YOUR GENEROUS SUPPORT AND CARING FOR YOUNG PEOPLE AND THE INTERESTS OF CRIME VICTIMS.

“There can be very **high rates of victim satisfaction in a restorative justice** approach. In terms of accountability—accountability meaning the person who committed the offenses accepts that their actions harmed someone and **take responsibility** for that and engage in a dialogue with a victim who’s willing to dialogue to address the harm – **victims feel a lot more listened to.**”

-Rosie Hildago,
National Latin@ Network



EXECUTIVE SUMMARY

Research shows that youth convicted of a crime who are served in the community are significantly less likely to reoffend than if they are confined, regardless of their offense type. Treating youth in the community makes everyone safer. Serving youth in the community is also significantly more cost effective than confinement and mitigates the disproportionate impact of confinement in the justice system on youth of color.

In the last two decades, largely in response to this body of research, there has been a seismic shift in the way confinement is used. According to federal data trends reported by the U.S. Department of Justice, since 1997, there has been nearly a 50 percent decline in the number of confined youth. This drop occurred during an era of historic declines in crime. Today, far fewer youth are confined and communities are safer. This clearly demonstrates that policymakers are not forced to choose between locking up more youth and being safe. To the contrary, incarcerating fewer youth is a key piece of creating a safer society.

However, the benefits of safely reducing the rate of incarcerated youth have not accrued equally among all. These reductions in the youth incarceration rate have been concentrated among nonviolent offenses—70 percent of the population decline. This distinction between nonviolent and violent¹ offenses that is frequently made by policymakers is artificial and not grounded in a strong public safety argument. Whether or not a crime is considered violent depends on the jurisdiction. For example, assaultive behavior can be prosecuted as nonviolent in some jurisdictions and violent in others.² Moreover, research shows that confinement leads to higher rates of reoffending compared to community-based strategies.

In addition, despite plummeting numbers of youth in confinement, racial and ethnic disparities have actually increased. Thus, it is clear that reducing the number of youth of color in confinement requires an intentional racial justice strategy that extends beyond simply changing policies and practices that drive confinement.

Despite some recent successes in safely reducing the rate of incarcerated youth, there is much work remaining. Diverting white youth engaged in nonviolent behavior is not a defensible strategy to roll back decades of overuse of incarceration and will not make communities safer. To sustainably reduce youth violence, recidivism, and racial disparities, we must focus on changing the many laws, policies, and practices that prohibit young people involved in a violent crime from taking advantage of effective interventions in a community setting.

This view is shared by many victims of crime, who are increasingly demanding change from a status quo that they see as costly, ineffective, and damaging to youth and their families. In *Smart, Safe, and Fair*, the Justice Policy Institute (JPI) and the National Center for Victims of Crime (NCVC) explore how to build more effective approaches to serve youth involved in a violent crime in the community. JPI started by researching strategies for maintaining public safety when a youth is involved in violent crime and examined the barriers to serving more youth involved in these

behaviors at home. JPI also solicited input from a diverse spectrum of stakeholders, including young people directly impacted by the justice system, public defenders and prosecutors, advocates and policy-makers.

Key takeaways include:

- The justice system currently treats youth charged with violent offenses in ways that are unnecessarily expensive, ineffective, and unjust;
- Confinement increases risk of reoffending compared to community-based approaches;
- Youth of color are more likely to be confined rather than benefitting from a community-based intervention; and
- Racial disparities are the result of cumulative disadvantages in their communities coupled with different patterns and practice of law enforcement.

After the initial research, JPI partnered with NCVV to gain insight into, and recommendations for, how best to serve youth charged with violent crime. This includes assessing whether the field supports serving youth involved in violent crime in a community setting.

As part of this effort, in December, 2017, NCVV invited victims and victim advocates from across the country to a roundtable to consider and discuss these issues. The purpose of the conversation was to engage the two communities—juvenile justice researchers and advocates with crime victims and victim advocates—in a dialogue around the research and policy solutions. Victims were consistent in their views, including the fact that they:

- Do not equate accountability with confinement;
- Want a voice in the process that resolves young people's behavior;
- Want opportunities for youth to get what they need so they no longer engage in crime;
- Support eliminating some of the barriers that prevent youth involved in a violent crime from being served in the community;
- Want more resources designated to support youth rehabilitation in the community;
- Say that whether the youth was involved in violent or nonviolent crime is far less important to them than whether the youth is served effectively, held accountable, and the victim(s) are safe and their needs are met;
- Want the youth justice system to address the reality that young people involved in violent crimes are often victims of violence themselves and need trauma-informed services for successful rehabilitation;
- Are concerned with how racial and ethnic disparities affect the treatment

and services provided to both youth offenders and victims; and

- Believe that serving youth involved in violent crime should not be built around the current philosophy of confinement. Instead, it should be built around a set of principles that focus on rehabilitation, victim safety, and the provision of ample services by both parties.

This report highlights areas of needed reform and provides examples of policies and practices that will result in a less costly, more effective, and more just system. These include:

- Expanding efforts to address the harm caused by crime in underserved communities, focusing on communities of color;
- Stepping up investments in approaches that address both the needs of young people involved in violent crime and reduce the harm caused by violent crime; and
- Advancing the juvenile justice system's ability to demonstrate accountability, share information, and help crime victims.

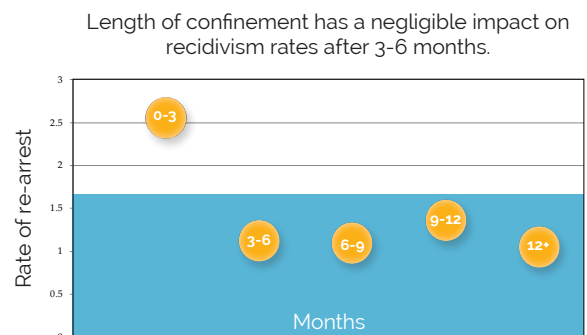
THE JUSTICE SYSTEM CURRENTLY TREATS YOUTH CHARGED WITH VIOLENT OFFENSES IN WAYS THAT ARE UNNECESSARILY EXPENSIVE, INEFFECTIVE, AND UNJUST

Research shows that youth involved in both nonviolent and violent behavior can be safely and successfully served in the community by utilizing similar approaches. By focusing on a youth's needs and providing individualized services, they are more likely to move beyond their behavior. Unnecessary confinement is associated with a host of issues, including increased likelihood of reoffending and detrimental effects of life outcomes around education, employment, and housing. Approaches that keep youth out of confinement and focus on community supervision have primarily been made available to youth with nonviolent offenses.

This is problematic because, regardless of whether a youth is involved in a violent or nonviolent offense, confining a young person results in a system that is worse for everyone.

Confinement is the most expensive way to address a youth's behavior. In many cases, the yearly cost of incarcerating a youth can exceed \$300,000, meaning that the community-based approaches that could effectively serve the same youth go underfunded.

Confinement increases a young person's likelihood of recidivating. When youth are served in the community rather than confined, they have been found to have a higher likelihood of avoiding future criminal justice involvement, regardless of their offense and risk level. This



Source: Ed Mulvey, et al., Youth Corrections Reform (Washington D.C.: The McCourt School of Public Policy-Lead Conference, 2017). PowerPoint.

also coincides with a series of better life outcomes, all of which help youth transition to being healthy, law-abiding, and productive adults, including:

- Academic achievement;
- Getting jobs and job training;
- Experience in the workforce;
- Being exposed to extracurricular activities; and
- Healthy socialization skills.

Current practice does not make the community or the youth safer; it is an ineffective use of resources, disproportionately impacts youth of color, and rarely meets the needs of the victim.

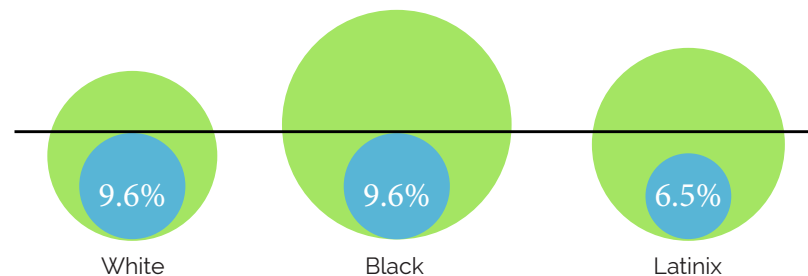
Young people of color are disproportionately impacted any time a system relies on confinement. Black youth only account for about 13.8 percent of the youth population, but account for 38 percent of the committed population and 43 percent of the detained population.

In the last decade, the percentage of white confined youth has decreased by half, whereas the Black population has grown by 7 percent. There is an inherent imbalance of impact when the system is reformed.

Despite the system disparity, youth of all backgrounds engage in similar behaviors. Eighty-two percent of youth confined for a gun offense were either Black or Latinx, yet survey-based research suggests that white, Black, and Latinx youth all carry a gun at a similar rate.

In many cases, this overrepresentation of youth of color is based on cumulative disadvantages. Young people of color experience higher rates of poverty and unemployment; face more challenges accessing health care and treatment; face barriers to seeing their case diverted or resolved by disposition to a community-based program; and face different levels of law enforcement contact than white youth. The cumulative disadvantages facing youth of color means they have a higher propensity of coming in contact with the justice system, regardless of the fact that research suggests that all youth engage in similar rates of delinquency.

When policy focuses on the offense rather than the needs, it creates a system that is worse for everyone. California has gone through a series of de-incarceration efforts for their youth confinement population; so much that today, a mere 4 percent of young people incarcerated in a state-run facility were involved in a nonviolent



Studies show youth **carry guns** at similar rates, but **arrest rates** vary widely by race.

Source: Laura Kann, Tim McManus, William A. Harris, et al., Youth Risk Behavior Surveillance – United States, 2015 (Washington, D.C.: Centers for Disease Control and Prevention, 2016) https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2015/ss6506_+updated.pdf and "Table 21B," 2016 Crime in the United States, Accessed February 21, 2018. <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-21>.

offense—a much better use of resources than in systems that confine higher percentages of youth involved in nonviolent offenses. Despite these successes in reducing the confined population, policy changes emphasizing community-based services have neglected to include youth involved in violence, even when research shows success engaging these youth. Similar trends were seen in Ohio and Florida.

Simply Locking Up Youth Who Have Committed a Violent Offense Not Only Fails to Provide Public Safety, But Also Does Not Meet the Needs of Victims of Crime

Research shows that the offense—violent or nonviolent—is not an accurate predictor of future offending. In many cases, laws require youth involved with violence to be transferred to an adult court, or face a mandatory or determinate sentence, which does not allow for a tailored response to address the individual's behavior. Decision-makers should assess the needs of each youth and provide individualized services and support.

Community and individualized support can come from evidence-based programs that serve youth involved in violence such as Functional Family Therapy or Multisystemic Therapy.

There are two approaches that help decision-makers with delivering individualized rehabilitative plans. These plans are typically sought for youth with a nonviolent offense, but are equally appropriate for youth involved in violent offenses:

Risk, Need, and Responsivity (RNR)

This approach calls for assessing what a young person needs, developing an individualized case plan to map out how services will be delivered to address their specific needs, and identifying strategies to help youth navigate the challenges of moving past delinquency. By targeting causal risk factors, a young person has a much better chance of moving past delinquency.

Positive Youth Justice (PYJ)

This approach is more focused on building on young people's strengths and creates opportunities for positive behaviors and outcomes for youth. The approach seeks to address issues that led a youth to be involved in the justice system in the first place by lifting barriers to accessing support the young person needs to thrive and succeed. It is facilitated by connecting them to resources in the following areas:

1. Relationships
2. Work
3. Health
4. Education
5. Community
6. Creativity

By utilizing these approaches, any support that could be provided in a facility setting can be accomplished in the community more effectively and less expensively. Jurisdictions can garner ideal outcomes by shifting their approach away from confinement and focusing resources on serving young people in the community. There has been success serving significant numbers of youth involved in violent crimes in the community. Washington, D.C., has been highlighted as a place that has switched their focus. By embracing a PYJ approach that focuses on personal accountability, Washington, D.C., has been able to shift their incarcerated population to the community, decreasing the recidivism rate even for youth convicted of acts of violence. This shift coincides with some of the lowest rates of youth crime since a recent peak in 2009.

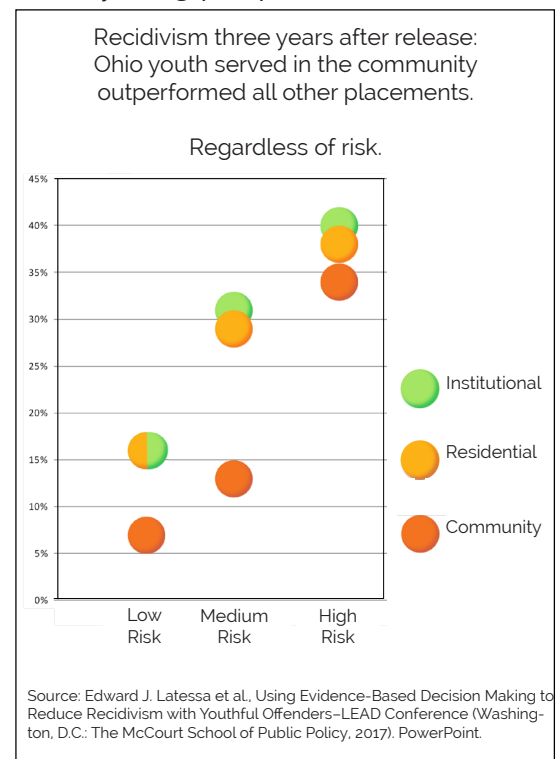
When appropriate resources are allocated to the community, there should be no barriers that prevent properly assessed youth from being served in the community. It's safer for the youth, and for the community.

VICTIMS OF CRIME WANT AN APPROACH THAT MEETS THE NEEDS OF THE YOUTH, STRENGTHENS FAMILIES, AND ADDRESSES THE UNDERLYING CAUSES OF CRIME

Any shift in practice needs to be in conjunction with meeting crime victims' needs. This creates safer and fairer communities for everyone.

JPI and NCVC convened a roundtable of crime victims and justice reform advocates to discuss proposed youth justice policy reforms. Two dozen leaders learned of the barriers to serving more youth in the community and were invited to provide their perspective on what needs to happen next. As part of the roundtable conversation, there were some consensus areas established:

- There should be no categorical bar on serving more young people involved in violent crimes in the community. This includes serving a young person in the community if it is likely to reduce recidivism, as long as the appropriate community-based approach is available. Participation in restorative justice principles were broadly supported if the harmed party consented.
- Community approaches are not necessarily "easier" than confinement—young people can be engaged in multiple services when they are at home. Washington D.C.'s focus connects committed youth to resources to help move them beyond their committing behavior. Because of this approach, 55 percent of youth committed to the agency are served in the community, including half the youth committed for a violent offense. Similar approaches have better served



youth in New York City and Wayne County, Michigan.

- Community approaches can be just as “tough,” and crime victims believe they can hold youth just as accountable as out-of-home confinement. When victims have been polled, by a margin of 3 to 1, crime victims prefer community-based rehabilitation and mental health and substance abuse treatment over incarceration. Community-based approaches—including restorative justice practices—have helped youth confront the issues leading to their behavior; acknowledge the harm done to the community and crime victims; and make restitution to the harmed party. Simply incapacitating someone has a negligible (or a negative) impact on their recidivism rates, whereas understanding the effect of their actions and the experience of their victim has a positive effect on public safety.
- Crime victims believe a community approach can hold a young person just as accountable as confinement. Accountability can be a key part of the community-based formula and does not need to equate confinement. Accountability can take the form of a young person successfully completing the terms of their probation, paying restitution to the victims, or participating in community building or restorative justice activities.
- Crime victims want youth to be served effectively, held accountable, and victims' needs to be met. The perspective offered by crime victims and crime victims' advocates echoed the position taken by juvenile justice experts—whether something is described in statute as violent or nonviolent is less important than how a young person is served; the vast majority of youth can move on from the behavior and the treatment approach can be provided in the community.
- Juvenile justice system processes should be individualized to meet the needs of both the young person and the crime victim. No participant conveyed that there is anything to be gained by categorically excluding youth from effective community approaches, and they agreed that approaches should be individualized to address the specific behavior.
- Crime victims believe we need to recognize that young people who are involved in violent crime are themselves overwhelmingly victims and should receive appropriate services. Engaging youth in similar victims' services will help reduce future crime and violence. An analysis of Florida found that 98 percent of youth in the juvenile justice system reported four or more Adverse Childhood Experience (ACE) indicators—including both physical and psychological abuse—with the remaining 2 percent reporting one to three. If the cycle of violence is going to be solved, the trauma that can lead to a young person being involved in violence simply must be treated.

Roundtable attendees cautioned that, just as there is no monolithic approach to serving a young person, there also is no monolithic perspective on what crime victims might think is an appropriate disposition for a youth. Crime victims need to

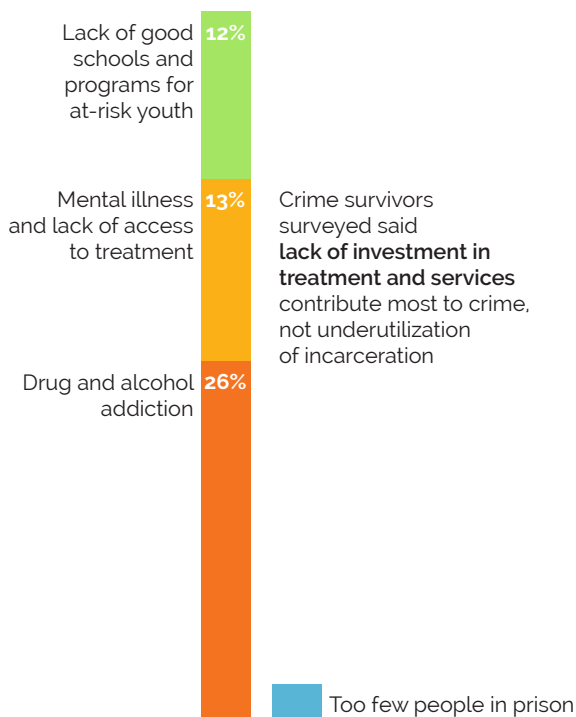
have a voice in the sentencing or disposition process.

The vast majority of youth should be served in the community, but there is a system-wide recognition that those who are a threat to public safety are appropriate candidates for a limited period of confinement. No matter where a youth is served, there should be a consensus of what supervision looks like.

THE PRINCIPLES FOR SERVING YOUTH IN THE JUSTICE SYSTEM SHOULD BE THE SAME, WHETHER THEY ARE IN THE COMMUNITY OR IN SECURE CONFINEMENT

These principles include:

- A positive youth justice approach;
- A trauma-informed approach;
- A supportive and well-qualified staff;
- Partnership with the young person's family;
- Purposeful programming;
- Healing and safe environments;
- Connecting youth to communities;
- Ensuring equity in the provision of all programs and opportunities; and
- Quality assurance and continuous improvement.



These principles are not dependent on the kind of behavior a young person is involved in or the offense for which they were convicted. They should drive the approach to any young person touching the juvenile justice system, regardless of where they are served.

A PATHWAY FORWARD: KEY BARRIERS AND POLICY RECOMMENDATIONS TO SERVE MORE YOUNG PEOPLE INVOLVED IN VIOLENCE IN THE COMMUNITY

When members of the crime victims' roundtable discussed how to support safer, healthier communities that address the needs of both crime victims and youth involved in violent crime, several key goals were identified. These included:

- Address the harm caused by crime in underserved communities and communities of color;
- Step up investments in approaches that both address the needs of young people involved in violent crimes and reduce the harm caused by violent crime; and

Source: N.A. National Crime Victim Survey, March 22-April 3, 2016. (San Francisco: David Binder Research, 2016).

- Juvenile justice systems need to demonstrate accountability, share information, and help crime victims.

States can implement important changes to policy and practice to meet these goals, including:

- Repealing state laws requiring a mandatory term of confinement or an automatic transfer to adult court. Mandatory minimums are resource intensive. Louisiana's "Vitter Law"—mandatory confinement until a youth's 21st birthday for certain offenses—can cost nearly \$600,000 to incarcerate one youth. Additionally, being charged as an adult is connected to a host of problems; youth are more likely to reoffend or be harmed while in the adult system, spend time in solitary confinement, and provide challenges to correctional leadership to serve youth effectively while keeping them safe.
- Changing practice standards that needlessly increase length of stay. In 2015, more than 31,000 youth were committed out-of-home, with nearly one-quarter of youth being confined for longer than 6 months. Adjusting practice that reduces an individual's length of stay would allow more young people involved in violent crimes to transition into the community. Research shows that length of stay has a negligible impact on rearrest rates after 3 to 6 months. Providing the wrong dosage of supervision can impact a youth's future involvement in violence.
- Expanding available diversion options for youth involved in violence. Every year, nearly one million youth are arrested and experience the negative consequences of justice system involvement. Pre-arrest and pre-adjudication diversion strategies provide meaningful opportunities to address a young person's behavior outside the justice system. Restorative justice practices have been widely explored internationally and have been shown to reduce reoffending among those involved in violence, compared to a disposition resulting in traditional criminal justice supervision. But compared with the tens of thousands of young people arrested for a violent crime, the number of youth being served by appropriate diversion schemes are measured in the hundreds.
- Narrowing the number of offenses or behaviors that require confinement. By limiting the scope of confinement eligibility, some states have increased their community supervision. In 2007, both California and Texas passed laws that prohibited a young person from being committed to their state-run facilities for a variety of offenses. These categorical bars catalyzed more youth being served effectively in the community. The limit has been mostly focused on misdemeanor or status offenses. However, key changes that would increase the scope of community support include having time limit policies, using data and studying practices to inform case processing, and improving reentry and aftercare approaches. These changes would help reduce the length of stay, individually tailor supervision, and free up resources to adequately fund community-based

programs.

- Providing appropriate supervision and support for young people in the community. Effective probation supervision for youth involved in violence is possible. According to a national survey, 28 percent of youth placed on supervision were convicted of a violent offense. Currently, probation and aftercare approaches are solely focused on conditions; a focus on serving a youth effectively in the community would involve a series of reforms, including:
 1. Reducing probation caseloads;
 2. Individualizing case planning that aligns the right amount of contacts and services;
 3. Limiting court orders;
 4. Connecting youth with community-based organizations and resources;
 5. Rewarding young people for good behavior; and
 6. Eliminating incarceration for minor violations while on supervision.

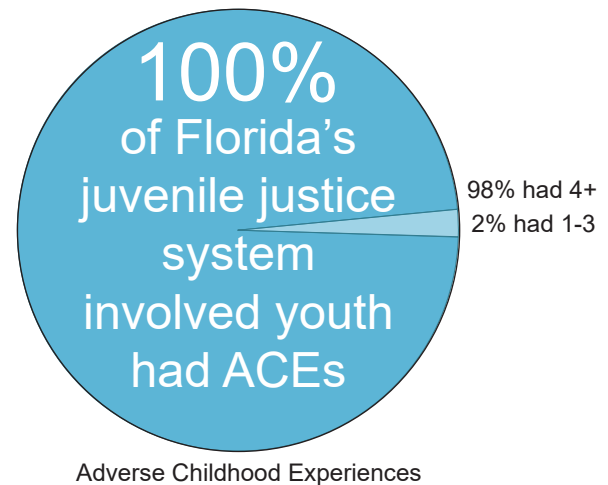
Addressing these barriers to move us toward the best community supervision model for youth would mean more attention, resources, and support for youth involved in violence when they are in the community. This includes:

- Ensuring a zealous defense at every stage of the justice system process. An effective legal defense plays a key role in determining if a youth will end up in the community or confined when charged with a violent offense. According to a 2017 analysis of juvenile public defense in all 50 states³, only 11 states provide every child accused of an offense with a lawyer. With an already insufficiently resourced and over burdened public defense system, if a youth lacks an adequate defense, in the courts may not have sufficient information to decide whether a youth can be served in the community.
- Resourcing community-based approaches at a scale sufficient to serve more youth involved in violent crimes at home. Federal, state, and local governments spend upwards of \$80 billion on prisons, jails, and the corrections system. There has been a concentrated effort in juvenile justice policy to move funding from incarceration to community-based approaches. However, this has been met with funding challenges. In California, only 4 percent of a \$90 million funding stream designed to serve youth in the community actually reached community-based organizations. Both Virginia and Ohio have experienced similar funding dilemmas after reforms to move more youth to the community, and while there has been progress in shifting resources, the majority of budgets continue to focus on the deep-end. When community-based approaches are not resourced at scale to serve youth, it creates a cycle of events that

fails both crime victims and young people directly.

- Decision-makers should appropriately use tools that assess what a young person may need to be served in the community. Utilizing Risk Assessment, Needs Assessment, and Structured Decision Making tools to determine the best place and most effective way to serve a youth will help better manage resources and navigate the aforementioned barriers. These tools do not replace the need for an individual to make a decision, but provide information to recalibrate the focus away from the offense and help make more objective and effective decisions. To use these tools effectively, they should be:

1. Combined with other sources of information;
2. Validated;
3. Free from bias based on race, ethnicity, sexual orientation, or gender identity and expression;
4. Monitored and reviewed; and
5. Expanded to measure ACEs.



Source: Michael T. Baglivio, "The prevalence of Adverse Childhood Experiences (ACEs) in the lives of juvenile offenders." *Journal of Juvenile Justice* 3, no. 2 (2014): 1-23.

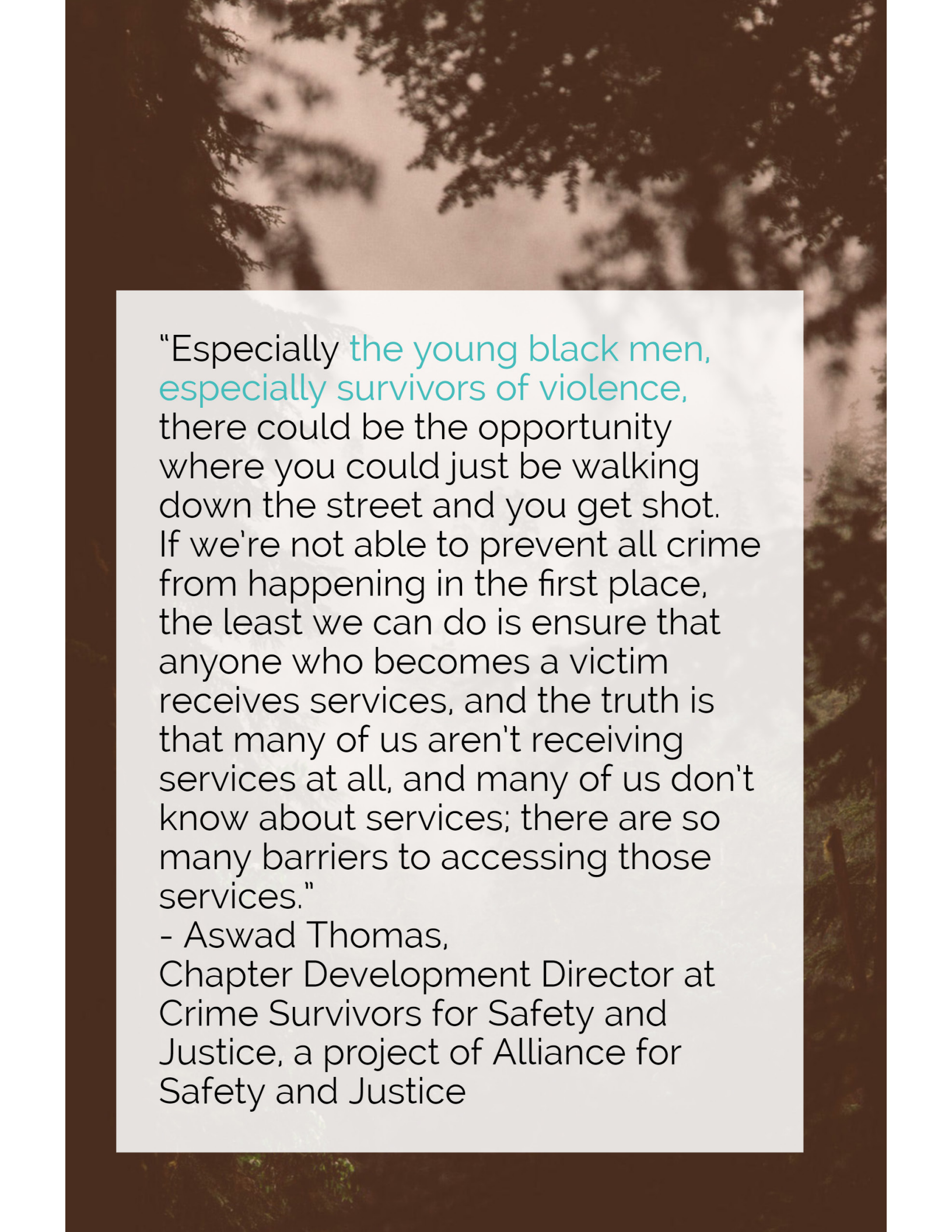
The research is clear that the community is the best setting to serve youth who have been convicted of a crime. Keeping kids close to home, providing services and support, and allowing them to engage with their families and experience positive peer associations results in significantly lower rates of reoffending. In addition to making everyone safer, youth can be treated in the community at a fraction of the cost of confinement, and keeping them at home helps mitigate the damage caused by racially disproportionate policies and practices in the justice system.

To truly reduce youth violence, recidivism, mass incarceration, and racial disparities, we must face the challenge of shifting youth convicted of violent offenses out of secure facilities and into the community. This is a view that is shared by many researchers, juvenile justice advocates, practitioners, and perhaps most importantly, victims of crime. The JPI/NCVC-convened roundtable and focus groups echo public opinion polling revealing that many crime victims believe that youth convicted of violent offenses can be effectively served in the community. Moreover, they feel their needs as victims of crime are not being adequately addressed. Finally, victims of crime recognize the fact that many youth who have committed violent offenses have themselves been victims of crime and are not receiving the trauma-informed care and services they need to heal and change their behavior. Focusing on these issues differently, they believe, would create a safer, healthier society for everyone.

1 For the purposes of this paper, we use the U.S. Department of Justice definition of a violent offense: murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. "2016 Crime in the United States," Federal Bureau of Investigations, Accessed June 20, 2018. <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016>; See also, "Violent Crimes," Office of Justice Programs – National Institute of Justice, Last Modified April 4, 2017. <https://www.nij.gov/topics/crime/violent/Pages/welcome.aspx>

2 Various Authors, "Defining Violence: Reducing Incarceration by Rethinking America's Approach to Violence," Justice Policy Institute, August 2016, http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_definingviolence_final_report_9.7.2016.pdf.

3 Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel (Washington, D.C.: National Juvenile Defense Center, 2017).



"Especially the young black men, especially survivors of violence, there could be the opportunity where you could just be walking down the street and you get shot. If we're not able to prevent all crime from happening in the first place, the least we can do is ensure that anyone who becomes a victim receives services, and the truth is that many of us aren't receiving services at all, and many of us don't know about services; there are so many barriers to accessing those services."

- Aswad Thomas,
Chapter Development Director at
Crime Survivors for Safety and
Justice, a project of Alliance for
Safety and Justice